



Informational Guideline Release

Property Tax Bureau
Informational Guideline Release (IGR) No. 03-208
August 2003

(Supersedes IGR 91-101)

SPECIAL REVOLVING FUNDS FOR HIRING OUTSIDE CONSULTANTS

Chapter 46 §36 of the Acts of 2003
(Amending G.L. Ch. 44 §53G)

This Informational Guideline Release (IGR) informs local officials that conservation commissions that impose fees on applicants for permits or approvals for the purpose of hiring expert consultants to assist in reviewing the applications may now deposit those fees into a special project account and spend them without appropriation to pay the consultants.

Topical Index Key:

Accounting Policies and Procedures
Fees and Charges
Special Funds

Distribution:

Treasurers
Accountants/ Auditors
Mayors/Selectmen
City/Town Managers/Exec. Secys.
Finance Directors
Finance Committees
City/Town Councils
City Solicitors/Town Counsels

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**Chapter 46 §36 of the Acts of 2003
(Amending G.L. Ch. 44 §53G)**

SUMMARY:

A recent amendment to G.L. Ch. 44 §53G adds conservation commissions to the list of boards authorized to use a special revolving fund for fees charged applicants for permits or approvals for the specific purpose of hiring expert consultants to assist in reviewing the applications. The fees paid by the applicant are deposited into a separate project account, which may be spent without appropriation by the board to cover the professional services it needs to review the particular application. Interest on the fees remains with the individual project account. The accounts remain open until the project is completed. The unspent balance, including interest, is refunded to the applicant at the end of the review process.

Previously, these special project revolving accounts were available only to zoning boards of appeal (or other special permit granting authorities designated by zoning by-laws or ordinances), planning boards and boards of health. Consultant fees imposed by conservation commissions belonged to the general fund and could not be spent without appropriation unless the city or town authorized a departmental revolving fund for the commission under G.L. Ch. 44 §53E½ for all such fees generated during a particular fiscal year. Under that revolving fund, however, the unspent fees paid by an applicant for a particular project could not be refunded. Conservation commissions will now be able to do so.

The amendment became **effective July 31, 2003.**

These guidelines update those issued when G.L. Ch. 44 §53G was enacted to reflect the addition of conservation commissions. See Bureau of Accounts Informational Guideline Release No. 91-101, *Special Funds for Hiring Outside Consultants* (February 1991).

GUIDELINES:

A. CONSULTANT FEES AND SELECTION

1. Fees

Applicants for permits and approvals from the conservation commission, zoning board of appeal (or other special permit granting authorities designated by zoning by-laws or ordinances), planning board or board of health may be charged reasonable fees by the board for the specific purpose of defraying the cost of hiring outside consultants as needed to perform its legal duties in reviewing the applications. The fees to be paid by applicants for particular permits and approvals must be established by rules and regulations of the commission or board. G.L. Ch. 40 §8C; 40A §§9 and 12; Ch. 40B §21; Ch. 41 §81Q; Ch. 111 §31.

2. Selection

A commission or board charging fees for hiring consultants must establish rules for choosing the consultants in order to use the special project funds. The selection must also be consistent with any applicable charter, by-law, ordinance or statutory provisions, *e.g.*, the Uniform Procurement Act, G.L. Ch. 30B.

The rules must set qualifications for the consultants. At a minimum those qualifications must include: (a) an educational degree in or related to the field at issue or (b) three or more year's of practice in the field at issue or a related field.

3. Appeal

The rules must provide the applicant paying the fee with an administrative appeal of the selected consultant. The appeal is to the board of selectmen or city council and is limited to claims that the consultant has a conflict of interest or does not possess the minimum required qualifications.

The time required for action by the commission or board on the application for a permit or approval is extended pending the appeal. The selection by the commission or board stands unless the board of selectmen or city council decides otherwise within one month following the filing of the appeal.

An administrative appeal does not preclude judicial review, if otherwise permitted by law, on the matter.

B. ACCOUNTING PROCEDURES

1. Fee Turnover

The commission or board must turn over all consultant fees received to the treasurer. The fees should be paid over as soon as possible, but at least weekly. The turnover should be accompanied by a report identifying by applicant the amount paid for each project. A copy of the report must also be forwarded to the accounting officer.

2. Investment and Interest

The treasurer may invest all fees collected in the same manner as general funds. A separate bank account is not required for the fees paid by an applicant for each project. The treasurer may pool all fees collected in a common account, but must allocate the interest earned on the fees charged to each project, however. The interest remains with the fees and accrues to the benefit of the applicant.

3. Project Account

The accounting officer must establish and maintain a separate account for the fees paid by the applicant for each project.

4. Annual Reports

The accounting officer must make an annual report of any special project accounts to the town administrator or town manager and the selectmen in a town or the mayor or city manager and city council in a city. This report must also be published in the annual report of the municipality.

All financial activity related to the special project accounts is also reported annually to the Director of Accounts in Schedule A.

C. EXPENDITURE OF FEES

1. Allowable Use

The commission or board may spend the fees, including any interest earned, without appropriation to engage outside consultants to assist in carrying out its legal responsibilities with respect to that particular project. The fees may not be used to pay for the services of municipal employees.

For example, the planning board may use the fees to hire an expert consultant to do a traffic study needed for a proposed project. The fees could not be used to defray the cost of a town planner who conducts the study.

2. Consultant Bills

The commission or board must use the same process used for payment of other departmental expenses to obtain payment of all bills being charged to the revolving fund. A payment voucher with appropriate supporting documentation is submitted to the accounting officer for placement of the bill on the treasury warrant.

D. REFUND OF UNSPENT FEES

1. Account Report

The commission or board must notify the accounting officer when each project is completed and all bills have been submitted for payment. The accounting officer must prepare a final report of the account activities for the applicant.

2. Refund Payment

Any balance remaining in the project account must be refunded to the applicant. If a refund is due, the commission or board should submit a voucher to the accounting officer for placement on the treasury warrant. Upon approval of the warrant, the treasurer will issue the refund to the applicant.